

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on March 21, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Gilda Clancy (R)
Rep. Bill Eggers (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 479, 3/16/2001; SB 470,
3/16/2001; SB 455, 3/16/2001
Executive Action: HB 626; SB 408; SB 470; SB
354; SB 479

HEARING ON SB 479

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: Tim Davis, Montana Smart Growth Coalition
Janet Ellis, Montana Audubon
Anne Hedges, MEIC
Byron Roberts, Montana Building Industry Association
Mona Jamison, Gallatin County
Terry Lonner, Gallatin County Open Lands Board

Opponents: Peggy Trenk, Montana Association of Realtors

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.1}

SEN. DON HARGROVE, SD 16, Belgrade stated, SB 479 provides an extra tool for a landowner in terms of developing property. It also gives direction to the Department of Commerce towards trying to stimulate cluster development. He gave an example regarding this issue. Two things have happened to make this bill more viable. First, some time has passed since it was first introduced in 1999 and more people have shown interest in it. Secondly, there is now a growth policy which provides some background and the planning to be done ahead of time. Within the bill the citizens win, the taxpayers win, the county wins and the environmentalists win.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 9.4}

Mona Jamison, Gallatin County, stated the bill is voluntary on behalf of the developer. The whereas' on the bill are very important because they describe the reason for the bill as a matter of public policy. The primary focus of the bill is to preserve the agricultural land and the open space that the farmers and ranchers provide to the citizens of Montana by being engaged in agriculture. This is a way to help them preserve the open space that they have. It is important to see what the definition of cluster development it on page 3 of the bill. It will be the decision on the local level on how these are implemented.

Anne Hedges, MEIC, stated the bill makes sense. Regarding page 7, line 27, it was critical for MEIC's support to have that language stricken. She went over that language. There are a lot of incentives in the bill for developers. Regarding the end

provision that allows the Department of Commerce to help local governments figure out innovative ways to develop property, that makes a lot of sense as they are the experts in the field and they should be helping local government.

Byron Roberts, MBIA, stated cluster developments are not new in Montana. This bill provides incentives to cluster development. The Department of Commerce model standards are fantastic in the bill. The bill provides a permissive way to encourage cluster development. He urged the committee's support of SB 479.

Tim Davis, MSGA, stated this bill doesn't force any county or city government to require cluster development but it provides incentives to developers and it gives something back to the community. He stated it is a great bill as it was amended in the Senate. He stated **Janet Ellis, Montana Audubon**, asked him to show her support of the bill.

Terry Lonner, Gallatin County Open Lands Board, submitted written testimony **EXHIBIT** (nah64a01).

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 17.6}

Peggy Trenk, Montana Association of Realtors, stated her opposition rests with the language that was stricken. She went over that language. The bill is a good tool but the stricken language needs to be put back in.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 19.7}

REP. BROWN asked **SEN. HARGROVE** can't this encouragement to do cluster development already be authorized by local governments and planning boards. **SEN. HARGROVE** stated it can be authorized and can be done by problems lay with the things that are required. In order to make this happen there has to be a growth policy. The bill gives the landowners some certainty that once they start the process something will be done. **REP. BROWN** asked so there is a tradeoff giving up future divisions of that land for circumventing some of the front end rules? **SEN. HARGROVE** stated yes.

REP. ERICKSON asked **Ms. Jamison**, can this bill be used by counties which already have a master plan which doesn't have the official title of growth policy? **Ms. Jamison** stated there is a difference between a growth policy and master plan. Even though

someone may view a master plan as being equivalent to a growth policy as a matter of law they are different. The word that is used in the bill is a growth policy. **REP. ERICKSON** redirected the question to **SEN. HARGROVE** who stated it requires a growth policy. A growth policy is a master plan that addresses growth. You do have to have a growth policy to take advantage of the bill.

REP. LAIBLE asked **Ms. Jamison**, regarding the deed restriction on page 7, line 27, is the reason the Realtors want the language included so they can do it once and get all of the perks and be able to come back in and do something beyond what the original scope was. **Ms. Jamison** stated she believes so. The language was deleted in the Senate. It is a matter of public policy as to which of this finally goes.

REP. LAIBLE asked **Ms. Trenk** for an example of what could take place within this process that the deed restriction may be visited later on. **Ms. Trenk** stated you don't always do cluster development in agricultural settings away from the community. In a cluster development close to the community over time the community grows around it. If infill development is going to take place this is the place we want to do it. Once there is a deed restriction on the property it can be revisited. That option is removed with the stricken language. It may not happen very often but it is a possibility.

REP. CURTISS asked **Ms. Trenk** does this change the criteria that are required under the environmental assessment? **Ms. Trenk** deferred the question to **Ms. Jamison** who stated it doesn't change the criteria. What the bill does is it provides community review as the big benefit to the bill.

REP. BITNEY asked **Ms. Jamison** are private property rights preserved with this bill? It is voluntary for local governments but could it be involuntary for a private property owner? **Ms. Jamison** stated it is voluntary whether or not an individual or developer would want to participate. That is the intent of the bill. **REP. BITNEY** asked **Ms. Jamison** to differentiate a development that is contiguous to a town vs. an island cluster development. **Ms. Jamison** stated an island would be outside the boundaries of a community vs. an area of open space or undeveloped land within the boundaries. She deferred the question to **SEN. HARGROVE** who stated everything is voluntary in this. It takes a landowner's positive action to want to do this. **REP. BITNEY** asked, regarding the whereas portion which talks primarily about preservation of farm or ranch type land, how would you address commercial development on a pasture or vacant land. **SEN. HARGROVE** stated he does not believe that would be

possible under this. This bill is aimed at residential cluster development and the rest of it is left in open spaces. **REP. BITNEY** stated it does not specifically say residential in the title of the bill. **SEN. HARGROVE** stated if it is not in the bill he will make sure it gets in. The easement will prohibit development of the rest of the area. The intent is that residential building in the cluster and the rest of the land is maintained in open space, agricultural habitat, etc.

REP. STORY asked **SEN. HARGROVE** could the open space be a golf course? **SEN. HARGROVE** stated no but the bill can be amended to state that. The intention is that the land would be maintained as agricultural and open space that is habitat agriculture.

REP. STORY asked **Ms. Hedges**, is there some middle ground between the deed restriction and the perpetual easement that would be flexible enough that there would be some way of dealing with future problems? **Ms. Hedges** stated a deed restriction raises a lot of questions. If there is another way to do this no one has found it yet. **REP. STORY** stated when a perpetual easement is created at some point in time there is going to be a problem. He gave an example regarding zoning. **Ms. Hedges** stated she agrees but she does not know how to solve that problem. This bill is aimed at agricultural open spaces, not communities.

REP. CURTISS asked **Ms. Jamison** regarding the language on page 1, line 23, is that program developed or how far along is the department with that? **Ms. Jamison** stated they have not developed model rules that could assist the various communities who are interested. It can be absorbed within the current staff and won't cost any more to the department. She then addressed the concerns of **REP. STORY**

REP. HARRIS asked **SEN. HARGROVE** if he would consider it a friendly amendment to add the word "residential" on line 15, page 3, before building? **SEN. HARGROVE** stated absolutely.

REP. BITNEY asked **SEN. HARGROVE** if he would consider it a friendly amendment to add the language back in on page 7, line 27. **SEN. HARGROVE** stated when this bill was crafted deed restriction was in it. He agreed to take it out in the Senate due to the public wanting it out. **REP. BITNEY** stated he would like, if possible, to see a consensus with the Montana Association of Realtors. **SEN. HARGROVE** stated he would like to see that too. He will work with those groups to try and reach a consensus. **REP. BITNEY** stated he would like to see that worked out.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 50.4}

SEN. HARGROVE stated he doesn't know if this will ever be used. The growth policy makes it possible. This gives a tool to landowners. He asked for a do concur.

HEARING ON SB 470

Sponsor: SEN. JERRY O'NEIL, SD 42, Kalispell

Proponents: None.

Opponents: Charles Brooks, Billings Chamber of Commerce &
Yellowstone County
Tim Davis, Montana Smart Growth Coalition
Byron Roberts, Montana Building Industry Association
Janie McCall, City of Billings
Bill Kennedy, Yellowstone County
Alec Hansen, League of Cities

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 53}

SEN. JERRY O'NEIL, SD 42, Kalispell, stated SB 470 is a bill to repeal the city's extra territorial jurisdiction over residents outside of the city's limits. The citizens in these donut areas are denied the right to vote for the officials that impose laws upon them because they are not residents of the city. By the constitution, the citizens of the donut area should be allowed to vote for the city council and mayor prior to the city making the rules to control the donut area. He urged a do concur.

Proponents' Testimony: None.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 57.2}

Bill Kennedy, Yellowstone County, gave a history of the donut bill. He went over certain points of the bill that were confusing. He has concerns with doing away with the 4.5 mile area and the county having to operate a complete zoning district county wide. Yellowstone County has been able to deal with these issues locally. He asked for a do not concur.

Janie McCall, City of Billings, stated the City of Billings is very concerned about the bill because it gets rid of the 4.5 extended jurisdiction. These issues can be solved at the local level. She talked about the joint effort between Billings and Yellowstone County to solve these problems. She urged a do not concur.

{Tape : 1; Side : B; Approx. Time Counter : 0.1}

Charles Brooks, Billings Chamber of Commerce & Yellowstone County, stated this is a local issue that should not involve the legislature. He went over specific parts of the bill he disagreed with. He asked for a do not concur.

Byron Roberts, Montana Building Industry Association, stated that cities must have more incentives to expand their boundaries. This bill will take away a tool that cities and counties have to assure the continuity of streets and utilities. He urged a do not concur.

Alec Hansen, League of Cities, stated this bill passed the Senate by one vote. He went over the constitutional issue and the sections of the bill. He stated the bill goes in the wrong direction and hoped for a do not concur.

Tim Davis, Montana Smart Growth Coalition, asked the committee to Table the bill.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 11.2}

REP. LAIBLE asked **Mr. Hansen**, in Billings is the development within the donut zone handled by a city/county joint board? **Mr. Hansen** deferred the question to **Mr. Kennedy** who stated in Yellowstone County there is a city/county planning board, two separate zoning commissions and a special zoning district. He went over those. **REP. LAIBLE** asked **Mr. Hansen** how is this handled in other cities around the state. **Mr. Hansen** stated he is not really sure what is going on around the state.

REP. BROWN asked **Mr. Kennedy** to give a breakdown on the monies that are spent by the city/county commission. Who puts in the majority of the funds and how do you split out the costs? **Mr. Kennedy** stated about 1/3 of the money comes from outside the incorporated city, 2/3 comes from the city. The option of separating the planning boards has been looked at but it would not be in the best interest of the county. **REP. BROWN** asked **Mr.**

Kennedy if there are any other incorporated cities within Yellowstone County who are represented through the county officials of the board. **Mr. Kennedy** stated yes, there are two other incorporated cities in Yellowstone County, Laurel and Broadview.

REP. ERICKSON asked **SEN. O'NEIL**, regarding page 2, lines 6 and 7, would the property owners who live in these areas lose some property rights? **SEN. O'NEIL** stated that he believes the applicability clause of section 6 would cover that. This is not changing land uses that have already been agreed upon.

REP. BITNEY asked **Mr. Hansen** regarding title 7, the issues are confusing, does the building permit issue tie into this? He also asked **Mr. Hansen** to respond to the fact that these citizens don't have the right to vote for the council people. **Mr. Hansen** stated this bill does not have anything to do with that.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 24.9}

SEN. O'NEIL stated he does not know why Yellowstone County is up in arms over this. As long as the county wants to agree about zoning this bill will not disturb that agreement. Yellowstone has a different situation than most counties in the state. He stated the Constitution should be upheld by the legislature.

HEARING ON SB 455

Sponsor: **SEN. STEVE DOHERTY, SD 24, Great Falls**

Proponents: None.

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 27.9}

SEN. STEVE DOHERTY, SD 24, Great Falls, stated SB 455 is a simple, straightforward bill. He gave a history of the bill. County Clerk and Records are unable to record deeds on Tribal, Military or Federal lands unless they go through subdivision review. The bill exempts certain land if it is in a location over which the state does not have jurisdiction from the requirements of subdivision review. People can then record deeds. He encouraged a do concur.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 31.8}

REP. HARRIS asked **SEN. DOHERTY** do you really mean to say that the state doesn't have jurisdiction or would it be better to say the county doesn't have jurisdiction? **SEN. DOHERTY** stated, the state subdivision laws are what this bill is after. **REP. HARRIS** asked, then it's the location rather than real estate which the state does not have jurisdiction on? He stated when you try to get something filed with the Clerk and Records office then the state has jurisdiction. **SEN. DOHERTY** stated actually they don't. Within the exterior boundaries of a reservation there are different jurisdictions. There should be a red flag if the land is within the boundaries of a reservation. If it is fee land within the boundaries of a reservation that is owned by a tribal or non tribal member then the state would arguably have jurisdiction. If you wanted to split that land you would have to go through the subdivision process. **REP. HARRIS** asked if ordinary people would understand the concept of where the state does not have jurisdiction? **SEN. DOHERTY** stated he thinks they would.

REP. STORY asked **SEN. DOHERTY** could it happen that a County Clerk and Recorder would just assume that the boundary of the reservation and everything in it would be ... **SEN. DOHERTY** stated he does not think so. If there is any question whether it is fee or trust land somebody will raise it and it would be answered. This would only work in those instances in which there is clearly no jurisdiction. There is a good balance between the tribes, counties and states.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 37.3}

SEN. DOHERTY stated this bill is simple. It will make it easier for people to transfer lands.

STATUS REPORT ON HB 69

{Tape : 1; Side : B; Approx. Time Counter : 38.2}

REP. DALE gave a status report on the subcommittee on HB 69.

EXECUTIVE ACTION ON HB 626

{Tape : 1; Side : B; Approx. Time Counter : 41}

Motion: REP. BROWN moved that HB 626 DO PASS.

Discussion:

There were three letters submitted to the committee for executive action on this matter **EXHIBIT(nah64a02)**, **EXHIBIT(nah64a03)** and **EXHIBIT(nah64a04)**.

Motion: REP. DALE moved that the **TECHNICAL AMENDMENTS BE ADOPTED**.

Discussion:

Mr. Mitchell explained the amendments. They are purely technical and don't make any substantive changes to the bill.

Vote: Motion that **TECHNICAL AMENDMENTS BE ADOPTED** carried unanimously.

Motion: REP. DALE moved that HB 626 DO PASS AS AMENDED.

Discussion:

REP. HARRIS stated the committee should address the concerns of the Blackfeet Nation.

REP. BALES stated this is a separate compact that is built between Fort Belknap and the State of Montana. There are a lot of conditions in the compact to address the concerns of the Blackfeet at some point in time. He thought the committee should go forward with the compact.

REP. STORY stated he thinks the committee needs to approve the compact. Compacts have been done before with water rights that are downstream from other federal reservations. In the end all water rights work out in priority.

REP. YOUNKIN referred to **EXHIBIT(4)**.

REP. CURTISS stated there have been some negotiations attempted since 1979. The committee should look at how much water is being put to beneficial use. We cannot afford to wait another 10 years so everyone will agree on this. With the drought situation we are facing this water could be put to a beneficial use. The

people upstream will have a chance to negotiate their own compact in the future.

REP. GUTSCHE commented on **EXHIBIT(3)** regarding the negotiations and concerns of the tribe. She also stated the Gros Ventre tribe is concerned about waiving of water claims and subordination of priority dates. She asked if someone from the Compact Commission would address those concerns.

REP. BROWN asked, hasn't the committee already gone through this in the hours of testimony? Is there a compelling reason that the committee should hear more?

REP. GUTSCHE stated the compelling reason is this is a really big deal.

REP. LASZLOFFY asked **REP. GUTSCHE** if she is undecided on this issue. **REP. GUTSCHE** stated she has not decided how she will vote on the bill yet.

REP. GUTSCHE asked **Barbara Cossens, RWRCC**, to address the concerns that were brought up by Harold Main and the Grods Ventre concerning the waiving of water claims, subordination and priority dates. **Ms. Cossens** gave a history of the Grods Ventre Tribe. Mr. Main and his father attended many of the negotiations which are open meetings on the reservation and brought up these issues. She went over those concerns. Nothing in this agreement affects any of the Gros Ventre who are not a part of the Fort Belknap Indian Community. Regarding the priority date, the Blackfeet Treaty which is the 1855 Treaty, Grods Ventre were part of the Blackfeet Nation so they were part of that original treaty. They were concerned that the treaty be recognized in this. The treaty is recognized in the Compact with the priority date of 1855. Regarding subordination, they are concerned with the protection for the 3900 acres that are off the reservation on one tributary of peoples creek as it comes onto the reservation. That is one of the compromises that is in the agreement. **{Tape : 2; Side : A; Approx. Time Counter : 0.1}** **REP. GUTSCHE** asked then the 3900 acres was a compromise that is off the reservation? **Ms. Cossens** stated it is upstream from the reservation. The Tribal Council unanimously agreed to it but the Treaty Committee objected to it. **REP. GUTSCHE** asked what are the claims to water rights that they waive by agreeing to this compact? **Ms. Cossens** stated, all tribes that have reservations within the state have claims to water. She went over the language in the adjudication. **REP. GUTSCHE** asked, was the Grods Ventre Tribe a party to the 1855 Treaty? **Ms. Cossens** stated the Grods Ventre were part of the Blackfeet Nation and were present in the treaty negotiations. There is a Grods Ventre signature on the 1855 Treaty.

REP. BROWN stated this 10 years of negotiation and hard work should not be thwarted because the Blackfeet disfavor the compact. The Blackfeet will be treated fairly and justly by the state.

REP. BALES asked **Ms. Cossens** what happens after this bill is passed? **Ms. Cossens** stated, after a compact goes through the legislature it then has to be taken to Congress. It will probably take two years to negotiate a federal bill with the federal team. After it goes through Congress it comes back to the state and is filed with Water Court. Sometime after it goes to Congress there will be a Tribal Referendum on it. The Water Court will issue a Decree and it goes out for objection.

REP. ERICKSON stated he is going to vote against the bill on behalf of the Blackfeet Nation. He went over the objections stated in their letter.

REP. WANZENRIED stated the committee has to look at the lengthy process that was gone through to bring this bill about. He talked about his personal experience with this process. There is nothing in the compact that would prevent the Blackfeet from going to court. He recommended a do pass.

REP. LAIBLE stated the question was asked of Chris Tweeten during the hearing if there was ever any upstream rights that were negotiated later. He testified it does happen quite often and is not unusual. The commission has spent 14 years working on this thing and if it is not approved then there isn't any leverage to get anyone to ever come back to the table. He urged a do pass.

REP. HURDLE asked will there still be plenty of water right left for the Blackfeet in this? **Ms. Cossens** gave a history of the negotiations with the Blackfeet. There is enough water.

Vote: Motion that **HB 626 DO PASS AS AMENDED** carried 17-3 with **Erickson, Gutsche, and Hurdle** voting no.

EXECUTIVE ACTION ON SB 408

{Tape : 2; Side : A; Approx. Time Counter : 17.6}

Motion: **REP. DALE** moved that **SB 408 BE CONCURRED IN.**

Discussion:

REP. STORY stated he is concerned regarding page 3, sub 5, what if the director makes a determination that is insignificant and

some other interested party wants to appeal that decision to the board?

REP. YOUNKIN stated, a party to the proceeding can file a contested case action which would be heard by the board. She is not sure how it would work if the interested party is not a party to the proceeding.

Mr. Mitchell stated this is an issue between the project applicant and the director. Certainly the project proponent is not going to appeal a non-significant determination. Typically interested persons take these issues to court on the basis that the MEPA review was inadequate and should have been determined to be significant and should have triggered an EIS. **REP. STORY** asked **Mr. Mitchell** without this law is that the path that the project sponsor would have to take also? **Mr. Mitchell** stated typically the project sponsor is at the mercy of the department in it's deliberations and it's determinations of significance. That could be appealable to the board under a contested case hearing through the Administrative Procedures Act. **REP. STORY** stated he does not have any interest in pursuing that amendment but thought the committee may be interested in the issue.

REP. YOUNKIN stated anyone that wants to be put on the board's agenda can be. She does not believe an amendment is necessary.

REP. MOOD stated this bill is primarily about making sure that the agency director knows that the determination significance is being made.

Vote: Motion that **SB 408 BE CONCURRED IN** carried unanimously.

EXECUTIVE ACTION ON SB 470

{Tape : 2; Side : A; Approx. Time Counter : 24.5}

Motion: **REP. STORY** moved that **SB 470 BE CONCURRED IN**.

Discussion:

REP. BROWN read a letter from the Planning Board in Flathead County in support of SB 470.

REP. WANZENRIED asked **REP. BROWN** who signed the letter. **REP. BROWN** stated, the letter is signed by Russell Crowter, President of the Flathead County Planning Board; Greg Stevens, President of the Kalispell City/County Planning Board; and Jeff Larson, Vice President of the Flathead County Planning Board. She stated,

Flathead County had and is in the process of changing from a joint city/county planning effort to a county effort. The cities are going to join forces to have city planning.

REP. ERICKSON asked **Mr. Mitchell**, regarding page 2, lines 6 and 7, if the law that establishes the zoning isn't there anymore is the zoning still there? **Mr. Mitchell** stated he does not know.

REP. YOUNKIN stated there is kind of a reverse ex post facto problem there. It does not undo something that was done under a previous law that has been repealed.

REP. ERICKSON pointed out crossing out lines 23 - 26 on page 3 is crossing out the idea that a city can even review and comment on a new subdivision. It would be a mistake to get rid of that. He thinks the whole bill is a mistake.

REP. YOUNKIN stated if this were to pass there is nothing that prevents an inter-local agreement between a city and a county.

REP. LAIBLE stated he had the sense that this bill was aimed at Kalispell. He asked the committee to explain to him what this bill actually does.

REP. CURITSS stated the basic question was these people are being taxed and being brought under the authority of a jurisdiction that they have no ability to address.

REP. LASZLOFFY stated he doesn't know if this is so much of an issue of being taxed without representation but there is definitely the issue of not being able to affect representation that is able to, through zoning, affect you financially. He supports the bill.

REP. STORY stated he does not support the bill. It is very unclear about where it is going. Bills are always passed that affect groups of people who don't get to vote. The situation in Flathead County can be addressed on the local level.

REP. BROWN stated she does support the bill. Even though this may be a Flathead County bill there are several bills that have been passed addressing primarily other counties.

REP. BALES stated he does not understand why the only people testifying against the bill were from Billings.

REP. YOUNKIN clarified that there were groups from other places in Montana opposing the bill.

REP. MOOD stated he does not know where this bill is going or what it means.

REP. HURDLE stated Billings has solved some of the problems that are in the bill. The city and county have worked very well together. The small towns ought to learn something from the city of Billings.

Vote: Motion that **SB 470 BE CONCURRED IN** failed 5-15 with Bitney, Brown, Clancy, Curtiss, and Holden voting aye.

REP. YOUNKIN reversed to motion to a table motion and therefore the table motion passed 15-5.

EXECUTIVE ACTION ON SB 354

{Tape : 2; Side : A; Approx. Time Counter : 43.3}

Motion: **REP. DALE** moved that **SB 354 BE CONCURRED IN**.

Motion: **REP. WANZENRIED** moved that **AMENDMENT SB035401.alm BE ADOPTED**.

Discussion:

REP. WANZENRIED passed out the amendment **EXHIBIT (nah64a05)** and explained it. The amendment puts the bill back into its original form.

REP. MOOD stated the amendment applies to all lands in Montana including the lands that are leased in the eastern part of the state. There is a very important difference between the timber lands and the agricultural lands. The lands on the eastern side of the state are already leased. The timber lands and the state forest lands are not leased. He gave an example of what the amendment does. He stated he is very much against the amendment.

REP. ERICKSON stated, if this amendment isn't adopted shouldn't the 'whereas' been deleted? The 'whereas' don't speak to the bill.

REP. BALES stated he would disagree with that. There is a distinct difference between the management of forest lands in the west and the agricultural lands in the east. He went over those differences.

REP. MOOD stated the 'whereas' are dealing with State Trust Lands. The 'whereas' are inclusive in the circle of state lands and not exclusive.

REP. HURDLE asked **REP. BALES** if he believes Montana is getting the full market value from grazing fees, that the level of those fees is fine. **REP. BALES** stated yes. He went over those fees. **REP. HURDLE** asked so are you talking long-term when it comes to grazing lands? **REP. BALES** stated it is a yearly fee that is paid. It is a long-term lease. **REP. HURDLE** asked so you are agreeing that this should only apply to forests? **REP. BALES** stated that is right.

REP. ERICKSON asked **REP. BALES** if we are getting full market value now why would the amendments affect that in any way? **REP. BALES** stated because the problem is not with those lands, the problem is with the management of the forest lands. Why list anything in the bill that there is not a problem with?

REP. GUTSCHE stated, without the amendment the whereas' don't make any sense and without the amendment this is only covering 500,000 of the 5.2 million acres in the trust lands. It was drafted to cover all of the lands.

REP. WANZENRIED stated there is nothing in the Attorney General's Opinion that narrows this down to state forest lands. The drafter and sponsor apparently agreed that the concept was encompassing to all trust lands.

REP. CURTISS stated a representative from the Fiscal Analyst's office testified in favor of this bill. They probably looked over it very carefully before they spoke in favor of it.

REP. LAIBLE asked **REP. WANZENRIED** if he worked with **SEN. CRISMORE** in drafting these amendments. **REP. WANZENRIED** stated no.

REP. LASZLOFFY stated originally he was going to vote for this amendment but based on **REP. MOOD's** testimony he will not vote for the amendment.

REP. BALES stated just because something is in a bill to begin with it is not necessarily what the sponsor intended.

REP. MOOD stated if bills were never changed from their original draft then there wouldn't be amendments. There is a substantial difference between agricultural lands and forest lands.

REP. HURDLE stated the committee is not talking about education and that's what this bill is about.

Vote: Motion that **AMENDMENT SB035401.alm BE ADOPTED failed 9-11 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, Wanzenried, and YOUNKIN voting aye.**

REP. YOUNKIN stated, it is a matter of maximizing the trust corpus for the benefit of it's beneficiaries. Trustees must manage a trust appropriately for the benefit of the present and future beneficiaries. *{Tape : 2; Side : B; Approx. Time Counter : 0.1}*

REP. HARRIS urged the committee to look at 77-1-202 which has to do with the obligations of the Board of Land Commissioners. There is a key sentence in the bill stating, "In the exercise of these powers the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well being of the people of the state as provided in the Enabling Act." These are not merely for the support of education. He gave an example of water shed protection. This bill shoves the other worthy objects aside without amending existing law. This bill will create a conflict that will lead to costly litigation.

REP. LASZLOFFY stated it is his understanding under the Federal Clean Water Act surface waters can't be degraded. When you talk about other benefits to the state when keeping lands undeveloped or uncut, with the number of acres that President Clinton locked up and other wilderness areas in the state that has been achieved. These lands should be used to provide income for the school trust rather than to try to achieve the things those other lands have been set aside to do.

REP. HARRIS stated, the language he read relates to the lands in this bill.

REP. BALES stated water shed protection is important. He stated probably the most destructive thing on a water shed is fire. Those fires are burning hotter and destroying the surface worse now because the forests have not been managed properly.

REP. MOOD stated there are independent clauses here which have been separated. The worthy objects that are provided in the Enabling Act are the common schools, the Universities, the School for the Deaf and Blind and the other schools which were set up as beneficiaries of the trust. The worthy objects are not habitat they are the beneficiaries of the trust.

REP. CURTISS stated maintenance of the Capitol is set forth as a worthy object also.

REP. BROWN stated, during the hearing she asked **Mr. Clinch** for a definition of "old growth". There are 8 definitions of old growth on the east side of the mountain and there are 14 definitions on the west side of the mountain. That shows the complication of this issue.

Vote: Motion that **SB 354 DO PASS** carried 12-8 with **Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried** voting no.

EXECUTIVE ACTION ON SB 479

{Tape : 2; Side : B; Approx. Time Counter : 10.7}

Motion: **REP. HARRIS** moved that **SB 479 BE CONCURRED IN.**

Motion: **REP. HARRIS** moved that a **CONCEPTUAL AMENDMENT BE ADOPTED.**

Discussion:

REP. HARRIS stated the amendment is on page 3, line 15, and would add the word "residential" before building.

REP. ERICKSON stated it should include commercial within residential areas. It is not a bad idea within certain clusters.

REP. STORY stated he agrees with **REP. ERICKSON**. The committee has to think about if cluster development might have a benefit to either intermix commercial and residential or at least allow for cluster developed commercial.

REP. HURDLE stated it could say "primarily residential".

REP. HARRIS WITHDREW THE AMENDMENT.

REP. STORY stated he is concerned with the definition of open space. It might be good to include, on page 7, line 23, a reference to the definition in 76-6-104.

Motion: **REP. STORY** moved that the **ABOVE AMENDMENT ON PAGE 7, LINE 23 BE ADOPTED.**

Discussion:

REP. BALES stated **SEN. HARGROVE** thought open spaces should remain in agriculture and agriculture is not mentioned in the definition in 76-6-104.

REP. YOUNKIN stated it says "conservation of land" which could include agriculture.

REP. ERICKSON stated he likes the amendment.

REP. LAIBLE stated by amending this with the definition in 76-6-104 are we excluding agricultural land entirely?

REP. HURDLE asked could it say on line 22, "for preservation of agricultural land and of open space" the definition of "open space" would be inserted after the word "space".

Substitute Motion/Vote: **REP. HURDLE** made a substitute motion that **AMENDMENT AS ABOVE STATED BE ADOPTED. Substitute motion carried unanimously.**

Motion: **REP. DALE** moved that **SB 479 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. MOOD asked **REP. STORY** what the problem was with this bill in 1999. **REP. STORY** explained the problem.

REP. LASZLOFFY stated he has concerns with private property rights. This bill is creating fewer options for people in the long run. He is against the bill.

REP. LAIBLE stated this bill is strictly volunteer. He stated he likes the bill.

REP. BITNEY proposed an amendment that would reinstate line 27 on page 7.

Motion: **REP. BITNEY** moved that the **AMENDMENT AS ABOVE STATED BE ADOPTED.**

Discussion:

REP. ERICKSON stated, if you put the language back in there will be a lot of new opponents. To put the language back in would be a real mistake.

REP. LAIBLE stated there is language in the perpetual conservation easement that will allow any infilling in the future. It would not be fair to the purchasers as they buy the development with open space.

Vote: Motion that **REP. BITNEY'S AMENDMENT BE ADOPTED failed 5-15**
with Bales, Bitney, Dale, Laszloffy, and Mood voting aye.

REP. CURTISS asked isn't the volunteer aspect of this on the part of the local government? This may create another donut situation. She is against the bill.

REP. YOUNKIN stated it is voluntary on the part of the county but it is also voluntary on the part of the landowner. This gives options to landowners who want to preserve their land for open space or agriculture or whatever.

Vote: Motion that **SB 479 BE CONCURRED IN AS AMENDED carried 17-3**
with Bitney, Curtiss, and Laszloffy voting no.

ADJOURNMENT

Adjournment: 6:50 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah64aad)